

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN J. FRAZER,

Case No. 21-CV-2763 (PJS/TNL)

Petitioner,

v.

ORDER

UNITED STATES OF AMERICA,

Respondent.

John J. Frazer, pro se.

Ana H. Voss, UNITED STATES ATTORNEY'S OFFICE, for respondent.

This matter is before the Court on petitioner John J. Frazer's objection to the Report and Recommendation ("R&R") of Magistrate Judge Tony N. Leung. After conducting a de novo review, *see* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), the Court overrules the objection and adopts the R&R. Judge Leung's analysis is plainly correct.

One point to add to Judge Leung's analysis: Even under *In re Davenport*, 147 F.3d 605 (7th Cir. 1998), a change in law "has to have been made retroactive by the Supreme Court" to qualify as grounds for a petitioner to invoke the savings clause of 28 U.S.C. § 2255(e). *Id.* at 611. The change in law on which Frazer relies—premised solely on *United States v. Howard*, 968 F.3d 717 (7th Cir. 2020), and *United States v. Sprenger*, 14 F.4th 785 (7th Cir. 2021)—plainly does not satisfy that requirement. He may not rely on the savings clause.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY ORDERED THAT:

1. Petitioner's objection [ECF No. 10] is OVERRULED.
2. The report and recommendation [ECF No. 8] is ADOPTED.
3. Petitioner's motions to appoint counsel and for release pending appeal [ECF Nos. 5–6] are DENIED.
4. The petition for a writ of habeas corpus [ECF No. 1] is DISMISSED
WITHOUT PREJUDICE for lack of jurisdiction.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 3, 2022

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge